

In re: Matyas, Jr. et al.
Serial No.: 09/324,308
Filed: June 2, 1999
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REMARKS

Applicants appreciate the thorough examination as reflected in the Final Official Action mailed March 30, 2004. Applicants also appreciate the courtesy extended to Applicants' representative in the telephone interview of April 15, 2004.

Interview Summary

During the interview, the rejections based on Sections 101 and 112 were discussed with the Examiner. Applicants noted to the Examiner that these rejections are new rejections that Applicants have not had an opportunity to address in any prior response. The Examiner indicated that he would be receptive to claim amendments even after final. In particular, Applicants discussed the possibility of amending the method claims to recite that the steps are carried out in hardware and/or software. Applicants also discussed the Section 112 rejections and the basis of those rejections.

Other Applications

In reviewing the present application to prepare this Amendment and to assure that all art from other applications was cited in the present application, Applicants noticed that the present application was identified as a related application in the subsequently filed United States Patent Application Serial No. 09/357,483 (the '483 application) and, therefore, out of an abundance of caution, Applicants provide the present statement to confirm that the Examiner is aware of the '483 application. Applicants also note that certain of the claims in the '483 application currently stand rejected based on references of record in the present application and that no double patenting rejection has ever issued in the '483 application.

The Section 101 Rejections

Claims 1-26 and 40-51 stand rejected under 35 U.S.C. § 101 as directed to non-statutory subject matter. In the Final Official Action the Examiner states that the claimed invention is not limited to the technological arts because the claimed invention is abstract in nature in that a human can perform the methods in the claims. Final Official Action, p. 2.

While Applicants submit that, even if the assertions in the Final Action true, statutory subject matter is still recited, to expedite the present proceedings, Applicants have amended the independent method Claims 1 and 40 to recite that steps are carried out in hardware and/or software. Accordingly, Applicants submit that the method claims are not abstract as they are carried out in hardware and/or software.

Claims 14 and 46 are system claims, not method claims and are written in means-plus-function form. Applicants submit that system claims are clearly not abstract as they expressly recite a system. Furthermore, the present specification does not describe means for carrying out any functions recited in the claims as being provided solely by human action. As such, a human would not be a structural equivalent to the means for carrying out the recited functions discussed in the specification. In fact, the specification describes the means as being provided by hardware and/or software. As such, Applicants submit that the system claims are not abstract.

In light of the above discussion, Applicants submit that the rejections based on 35 U.S.C. § 101 have been overcome.

The Section 112 Rejections

Claims 14-39 and 52-57 stand rejected under 35 U.S.C. § 112, second paragraph as the "claims include means limitations that fail to distinguish one grouping of claims from another." Final Action, p.2. While, Applicants submit that the claim language satisfies the requirements of 35 U.S.C. § 112, to expedite the present application, Applicants have amended the system claims to clearly distinguish one means recitation from another. In particular identifiers have been added to the means recitations so that the different means recitations may be clearly distinguished. Applicants have amended the computer program product claims to remove the means recitations and provide identifiers of the various computer readable program code recitations that clearly distinguish the different recitations. As such, Applicants submit that different claims may be clearly distinguished from one another and submit that the rejection of Claims 14-39 and 52-57 has been overcome.

Claims 14-26 stand rejected under 35 U.S.C. § 112, second paragraph as being indefinite because the means limitations "are not defined by the specification." Final Action, p. 2. Applicants respectfully disagree. In particular, the specification states:

The present invention will now be described with respect to **Figures 3, 4 and Figure 6**. **Figures 3, 4 and 6** are flowchart illustrations of embodiments of the present invention. It will be understood that each block of the flowchart illustrations, and combinations of blocks in the flowchart illustrations, can be implemented by computer program instructions. These program instructions may be provided to a processor to produce a machine, such that the instructions which execute on the processor create means for implementing the functions specified in the flowchart block or blocks. The computer program instructions may be executed by a processor to cause a series of operational steps to be performed by the processor to produce a computer implemented process such that the instructions which execute on the processor provide steps for implementing the functions specified in the flowchart block or blocks.

Accordingly, blocks of the flowchart illustrations support combinations of means for performing the specified functions, combinations of steps for performing the specified functions and program instruction means for performing the specified functions. It will also be understood that each block of the flowchart illustrations, and combinations of blocks in the flowchart illustration, can be implemented by special purpose hardware-based systems which perform the specified functions or steps, or combinations of special purpose hardware and computer instructions.

Specification, p. 15. Thus, at least the blocks and/or combination of blocks in the flowcharts and description related thereto provide define the corresponding structure for the means-plus-function recitations of Claims 14-26. Accordingly, Applicants submit that Claims 14-26 are not indefinite.

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Conclusion

In light of the above discussion, Applicants submit that the present application is in condition for allowance, which action is respectfully requested. If, in the opinion of the Examiner, a telephonic conference would expedite the examination of this matter, the Examiner is invited to call the undersigned attorney at (919) 854-1400.

Respectfully submitted,



Timothy J. O'Sullivan

Registration No. 35,632

Customer No. 20792
Myers Bigel Sibley & Sajovec
P. O. Box 37428
Raleigh, North Carolina 27627
Telephone: (919) 854-1400
Facsimile: (919) 854-1401

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Traci A. Brown